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Remarks:

*Regarding the rejection of claims 1-8, and 10 under 35 USC 112, 2<sup>nd</sup> paragraph:*

The amended claims presented in this paper are believed to fully address and overcome the Examiner's grounds of rejection.

The applicant also submits new claims for further specific consideration by the Examiner.

*Regarding the rejection of claims 1-8, and 10 under 35 USC 103(a) in view of US 4670916 to Bloom (hereinafter simply "Bloom"), in view of GB 2329399 to Lhoste (hereinafter simply "Lhoste"), and WO 03/042462 to Bariou (hereinafter simply "Bariou"):*

The applicant traverses the Examiner's rejection of the claims in view of the combined references of Bloom, Lhoste and Bariou.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under §103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. More recently in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007), the Supreme Court held that The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396. Exemplary rationales that may support a conclusion of obviousness include:

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- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. See MPEP 2141 (III).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

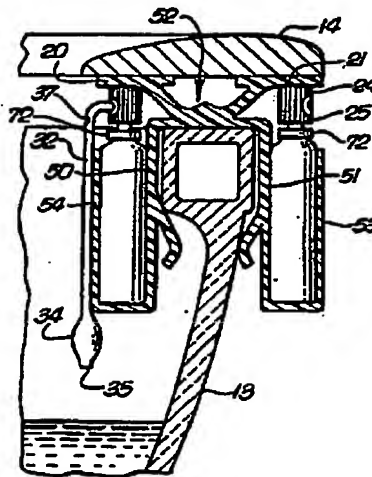
It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016,

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1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The applicant traverses the Examiner's rejection of the claims in view of the Bloom reference as modified by Lhoste or Bariou as the Examiner suggests.

A skilled artisan considering Bloom would recognize from the outset that Bloom's device relies wholly upon two pressurized canisters, one of which dispenses a treatment composition to the interior of a toilet bowl, the other of which dispenses a second treatment composition to the air outside of the toilet bowl. Such is exemplified by the following figure from Bloom:



As is further visible from our review therefrom however, Bloom's article fails to provide any passive mode of operation. The arrangement and the configuration of his device requires that in order for any product to be dispensed that, pressure be applied to the actuators are the respective pressurized canisters. This provides for a somewhat

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complicated mechanical arrangement which would ensure that in the absence of a suitable amount of pressure that, the actuators would it not be operated while at the same time, would be suitably activated when a person is sitting upon the toilet bowl. Perhaps more importantly are also the substantially limited benefits when treating a lavatory appliance such as a toilet bowl as depicted by Bloom as such only occurs when a person is sitting upon a toilet bowl part furthermore, Bloom fails to provide an arrangement whereby the water in the upper tank or cistern of the lavatory appliance can provide both simultaneous treatment of the water contained within the cistern, and treatment on the ambient environment of the cistern. Such would simply not be possible with the Bloom device.

The Examiner's reliance upon the later references of Lhoste and Bariou are at best, an impermissible hindsight reconstruction of the applicants presently claimed invention. The Examiner is reminded that in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987). The Examiner is also reminded that it is also well settled law that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

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The Examiner's proposed substitution of the "solid" fragrance composition of Lhoste in a cavity as suggested by Bariou does not address the further requirement, now claimed, that:

"...(a) a first dispenser for containing a treatment composition, which first dispenser permits for passage of water contained within the sanitary appliance into and out of contact with the first dispenser containing said treatment composition and with said treatment composition; ..."

Such a modification is not possible from the Bloom reference which clearly depicts a device which includes at least two sealed pressurized canisters as an essential part of his device. A skilled artisan recognize in that, due to the expected deleterious effects of a water contacting one or more of the metal parts up such sealed pressurized canisters that a skilled artisan would not consider any modification wherein a part of such canister were contacted with, or even immersed within water for any period of time. It's quite clear that such consideration has been taken into account by Bloom in that Dean hanger which he provides is snugly fitted on the underside of the toilet seat and a very proximate to the toilet bowl rim such that the base portions of his canisters are well above the water level contained within the toilet bowl. Even more significant is the fact that his pressurized canisters are provided within an enclosing sleeve of a polymer material which further isolates and separates his canisters from contact with water, be such contact accidental contact or intended contact. It is a further feature evident from Bloom that a metering dispensing valve is provided on each of his pressurized canisters as only a specific dosage of a composition is dispensed, but only when a user is present and pressure is applied to the top of the toilet seat. Again, such teaches that only periodic dosing of both Bloom's composition directed to be supplied to the interior water off the toilet bowl, as well as the further treatment composition provided to the ambient air space near the toilet bowl, occur. The Examiner's proposed modifications of Bloom to include the purported teachings out of the Lhoste and Bloom references would just require a not insubstantial modification of Bloom's device and furthermore, such modification would defeat the

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principle of operation of the Bloom device. Such would thus not render the applicants currently claimed invention is being obvious.

Accordingly, reconsideration of and withdrawal of the rejection of the claim is solicited.

Early issuance of a *Notice of Allowability* is requested.

Should the Examiner believe that telephonic communication will advance the prosecution of the present application they are invited to telephone the undersigned at their convenience.

**CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

  
Andrew N. Parfomak, Esq.

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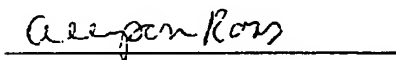
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18 May 2010  
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Allyson Ross

Allyson Ross

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19 May 2010  
Date